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care requires that two be provided, and a corporation is liable for negligence in only providing one.⁶ It is also well settled by another line of decisions that when the deductions from the wages of its employees exceed the amount expended in the care of its sick and injured employees, the corporation is liable for the negligence or malpractice of the surgeons employed by it.⁷ From an inspection of the authorities it appears that Virginia is well in line with the majority of the courts of this country.

A. W. H. T.

CONFLICT OF LAWS—STATUTE OF FRAUDS—VA. CODE, § 5561.—The substance of § 5561, subsec. 6 of the Virginia Code, is that *no action shall be brought* upon any contract for the sale of real estate, or for the lease thereof for a longer time than one year, unless the promise, contract, agreement, etc., or some memorandum or note thereof be in writing and signed by the party to be charged or his agent. This clause is for all intents and purposes a re-enactment or adoption of part of the famous Fourth Section of the English Statute of Frauds under which so many interesting cases have arisen. We present here a problem of general interest arising under this statute on which there is naught but scant and conflicting authority.

A, domiciled in a foreign State, owns land in Virginia. While occupying his Virginia estate he receives a verbal offer for its purchase and verbally accepts such offer. Later he repudiates the contract and returns to his domicile. Supposing the land to have greatly enhanced in value, or the offerer to have been damaged by the refusal to sell (but not in such manner that relief could be obtained in equity), what is the remedy of the would-be purchaser?

The contract created by the offer and acceptance is clearly non-enforceable and remediless in Virginia, but the question at once arises, could there be an action for damages at the domicile of the owner for breach of a personal contract? If there be a corresponding Statute of Frauds (*no action shall be brought*) in the domicile of the owner there is clearly no remedy in the courts of that State, but how if oral contracts for the transfer of land are upheld in that State? Again, how if the law of the owner's domicile declares such oral contracts absolutely void?

In the case of *Dupuy v. Delaware Ins. Co.*,¹ the United States District Court for the Western District of Virginia lays down the doctrine that a contract for the sale of Virginia land not evidenced by writing is not void but is *voidable* at the option of one

⁶ *Nations v. Ludington, etc., Co.*, 133 La. 657, 63 So. 257, Ann. Cas. 1916B, 471.

⁷ *Texas & Pacific Coal Co. v. Connaughton*, 20 Tex. Civ. App. 642, 50 S. W. 173; *Sawdey v. Spokane Falls, etc., R. Co.*, 30 Wash. 349, 70 Pac. 972, 94 Am. St. Rep. 880.

¹ 63 Fed. 680.

of the parties thereto. However Judge Paul in his opinion goes on to say, "The language of the statute relied on is not that a contract for the sale of real estate shall be void unless made in writing, but that no action shall be brought thereon..... The validity of the contract is not affected by the failure to reduce it to writing but only the remedy is affected."

It is an established principle of private international law that matters of remedy are governed by the law of the place where action is brought, and in support of the view that the Virginia Statute affects the remedy only, and that suit may be brought at the domicile of the owner, Prof. R. C. Minor, in his text on CONFLICT OF LAWS, says:

"Upon principle therefore it would seem clear that although there is a statute of this sort in the situs of the land or in the locus celebrationis of the contract, yet if there is no such statute in the forum, an action may be maintained there upon the contract, and this is true even though the lex fori declares such a contract not in writing to be *void*; for the latter law would be applicable only to contracts *made* in the forum."²

In the case of *Amsinck v. Insurance Co.*,³ involving a similar statute, the court said, "But the oral contract to purchase was not void or illegal by reason of the statute of frauds. Indeed the statute presupposes an existing lawful contract. It affects the remedy only as between the parties and not the validity of the contract itself."

Hence one view is that the Virginia Statute merely renders the contract unenforceable and remediless in Virginia, and that in the absence of a similar statute, (one affecting the remedy), an action might be maintained for the recovery of damages at the domicile of the owner.

On the other hand, where suit was brought in Illinois, on a contract made in Kansas, to sell land in Kansas, the court lays down the following doctrine: "It is a familiar rule that the laws existing at the time and place of the making of a contract enter into and form a part of the contract," the same "as if they were expressly referred to in its terms. This rule embraces alike those which affect its validity, construction, discharge, and *enforcement*." (*Italics ours.*) If, it is argued, a contract is void or voidable under the Statute of Frauds in the State where it is made, because not in writing and signed, that is a mere matter of personal defense to be pleaded and proved by the defendant.⁴ Mr. Justice Craig also quotes from the opinion in *Edwards v. Kearzey*,⁵ a U. S. Supreme Court case, which is authority for the principle that the remedy subsisting in a State when and where

² MINOR CONFLICT OF LAWS, p. 418. See also *Wolfe v. Burke*, 18 Colo. 264.

³ 129 Mass. 185.

⁴ *Miller v. Wilson*, 146 Ill. 523.

⁵ 96 U. S. 595.

a contract is made, and is to be performed, is a part of its obligation.⁶

It is difficult to reconcile the statement made in *Dupuy v. Insurance Co.*,⁷ that such contracts not in writing are voidable, with a subsequent statement by the court in the opinion in the same case, where it is said, "The Virginia Statute of Frauds does not affect the validity of contracts but only the remedy for their enforcement." If the contract not in writing is indeed voidable, (by the effect of the Statute of Frauds in force in the *lex celebrationis*, also the *lex solutionis*) as is said in this case,⁸ then on the authority of *Miller v. Wilson*,⁹ and *Edwards v. Kearzey*,¹⁰ it would seem that a personal action could not be maintained at the domicile of the owner to obtain damages on such personal contract.

The question may be considered as still an open one, there being practically no authority directly in point.

W. R. A.

DIVORCE—DESERTION—PERMANENCY.—A husband's desertion of his wife by refusing to treat her as his wife and by rejection of her appeals for reconciliation, *held*, not deprived of the element of permanency necessary to the granting of a divorce by his intimation that after an indefinite period, when she should in some way not indicated have been sufficiently punished for an act in her childhood, he might take her back. *Ringgold v. Ringgold* (Va.), 104 S. E. 836.

⁶ See also *Pritchard v. Norton*, 106 U. S. 124; *Houghtaling v. Ball*, 19 Mo. 84; *Denny v. Williams*, 5 Allen (Mass.) 1.

⁷ *Supra*.

⁸ See also *Hurley v. Hurley*, 110 Va. 31.

⁹ *Supra*. ¹⁰ *Supra*.